

# EXHIBIT A

s/ Brittany N. Conner  
S.C. Bar No. 103872  
DEVORE, ACTON and STAFFORD, P.A.  
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*Attorney for Plaintiff*

6. At said time and place, Defendant Smith was operating a 2019 truck vehicle, owned by Defendant Diamond S. Ventures, in a northern direction on I-85 in Seneca, Oconee County, South Carolina.

7. Upon information and belief, at all relevant times, Defendant Smith was operating the vehicle with the express and/or implied permission of Defendant Diamond S. Ventures, Inc. and was acting as an employee and/or agent of Defendant Diamond S. Ventures, Inc., in the course and scope of said employment or agency.

8. At the time and place mentioned above, Plaintiff Hess was lawfully traveling northbound on I-85, when Defendant Smith was traveling too fast for conditions and collided with the rear end of Plaintiff's truck, and resulting in severe and painful injuries and damages to Plaintiffs as more particularly described hereinafter.

**FOR A FIRST CAUSE OF ACTION**  
**NEGLIGENCE OF DEFENDANT THOMAS BRADLEY SMITH**

9. Plaintiffs incorporate the herein by reference the allegations of Paragraphs 1-8 as if fully set forth herein.

10. At all times hereto, Defendant Smith was a professional driver with a commercial driver's license.

11. At all times material hereon, Defendant Smith was driving a commercial motor vehicle in interstate commerce and was subject not only to South Carolina traffic laws and trucking safety regulations, but also the Federal Motor Carrier Safety Regulations.

12. Defendant Smith was grossly negligent in the operation of the tractor-trailer he was driving in at least the following ways:

- a. In choosing to drive while distracted;
- b. operated the vehicle upon a highway without due care, caution and circumspection, in a careless and reckless manner, and at a speed and in a manner so as to endanger or be likely to endanger the persons or property of others, including Plaintiff herein;
- c. failed to keep the vehicle under proper control;
- d. failed to keep a proper lookout in his direction of travel;
- e. operated the vehicle at an excessive rate of speed, or a speed greater than was reasonable and prudent under the conditions then and there existing;
- f. failed to reduce the speed of the vehicle in order to avoid a collision;
- g. in violating applicable sections of the Federal Motor Safety Regulations, which violations constitute *negligence per se*; and

- h. operated the vehicle in a manner that was otherwise careless and grossly negligent.

13. As a direct and proximate result of the aforesaid collision and the gross negligence and breach of duty of Defendant Smith, Plaintiff Hess has sustained severe and painful injuries to his person, and all of Plaintiff Hess' aforesaid injuries and damages have caused him to suffer physical pain, suffering and mental anguish for a significant period of time.

14. As a direct and proximate result of the aforesaid collision and the gross negligence and breach of duty of Defendants, Plaintiff Hess has become obligated for the payment of sums of money for doctor bills, prescriptions and other medical care, attention and treatment, for himself.

15. Defendant Smith is liable to for all damages allowed by law for the injuries, damages, and losses sustained by Plaintiff in this case.

**FOR A SECOND CAUSE OF ACTION**  
**NEGLIGENCE OF DIAMOND S. VENTURES, INC.**

16. Plaintiffs incorporate the foregoing allegations and Paragraphs 1-15 as if fully set forth herein.

17. At all times material hereto, Defendant Smith, was an employee or agent of Defendant Diamond S. Ventures acting within the scope and course of his employment or agency.

18. Defendant Diamond S. Ventures, Inc. is liable for the gross negligent actions and omissions of Defendant Smith pursuant to the doctrine of *respondeat superior* and the rules of agency.

19. As an employer, Defendant Diamond S. Ventures, Inc., was negligent in hiring, training, entrusting, supervising, and retaining Defendant Smith in connection with his operation of a commercial motor vehicle, and for otherwise failing to act as a reasonable and prudent trucking company under the same or similar circumstances.

20. Defendant Diamond S. Ventures Inc. was at all relevant times a motor carrier as defined by the Federal Motor Carrier Safety Regulations and was engaged in interstate commerce. As such, Defendant Diamond S. Ventures was at all relevant times subject to the Federal Motor Carrier Safety Regulations.

21. As a motor earner, Defendant Diamond S. Ventures Inc. had certain duties and responsibilities as defined by the Federal Motor Carrier Safety Regulations and industry standards, including, but not limited to, the duty to properly qualify Defendant Smith, the duty to properly train Defendant Smith, the duty to supervise the hours of service of Defendant Smith, the duty to properly maintain its vehicles, and the duty to otherwise establish and implement necessary management controls and systems for the safe operation of its commercial motor vehicles.

22. Defendant Diamond S. Ventures Inc. was also independently negligent failing to meet its duties and responsibilities under the Federal Motor Carrier Safety Regulations and industry standards.

23. As a direct and proximate result of the aforesaid collision and the gross negligence and breach of duty of Defendants, Plaintiff Hess has become obligated for the payment of sums of money for doctor bills, prescriptions and other medical care, attention and treatment, for himself.

24. Defendant Diamond S. Ventures Inc. is liable to for all damages allowed by law for the injuries, damages, and losses sustained by Plaintiffs in this case.

WHEREFORE, Plaintiffs prays for a judgment against Defendants, jointly and severally, as follows:

1. That Plaintiff have and recover of Defendants actual damages sufficient to compensate them for their personal injuries and damages as set out above, together with interest thereon at the statutory rate;
2. That all issues of fact be tried by a jury;
3. That the costs of this action be taxed against Defendants;
4. That Plaintiffs' attorney be awarded an attorney fee in addition to the amount recovered by Plaintiff in accordance with applicable law;
5. Punitive damages be awarded in an amount the jury believes to be just and fair; and
6. That Plaintiffs be awarded such other, further and different relief to which the Court may deem Plaintiffs are entitled.

This the \_\_\_\_\_ day of October, 2021.

s/ Brittany N. Conner  
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<p><b>STATE OF SOUTH CAROLINA</b></p> <p><b>COUNTY OF OCONEE</b></p> <p><b>EARNIE LEE HESS</b></p> <p style="text-align: right;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>THOMAS BRADLEY SMITH, and</b></p> <p><b>DIAMOND S. VENTURES INC.,</b></p> <p style="text-align: right;"><b>Defendants.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>IN THE COURT OF COMMON PLEAS</b></p> <p><b>Civil Action No.: 2021-CP-3700702</b></p> <p><b>AFFIDAVIT OF SERVICE</b></p>
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NOW COMES Brittany N. Conner, after being first duly sworn, and deposes and says:

1. That I am the attorney for the plaintiff in the above-captioned matter.
2. The Civil Summons & Complaint were served on defendant Thomas Bradley Smith at 3025 Hart Avenue, Melbourne, IA 50162.
3. That on November 5, 2021, I caused to be deposited the Civil Summons and Complaint in a U.S. Postal Service Depository to defendant with tracking number 7020 3160 0000 5703 0734 and on November 12, 2021, the Civil Summons and Complaint were received by defendant. Attached hereto as Exhibit A is the tracking and delivery information from U.S. Postal Service.

This the 22<sup>nd</sup> day of November, 2021.

s/ Brittany N. Conner  
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bconner@devact.com  
Attorney for Plaintiff

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG


SWORN TO and subscribed before me this  
22<sup>nd</sup> day of November, 2021.

Notary Public

My Commission Expires: 5/17/26





SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  X <i>Thall</i>  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Thomas Bradley Smith  3025 Hart Ave  Melbourne, IA 50602</p>		<p>B. Received by (Printed Name)  KS RT 321 C-19</p>	<p>C. Date of Delivery  11-13-21</p>
<p>2. Article Number (Transfer from service label)</p> <p>7020 3160 0000 5703 0734</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	



